IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Bail Appl..No. 6786 of 2007()

` CRIME NO.1574/07 OF PERUMBAVOOR POLICE STATION

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PETITIONER : ACCUSED:

ABDUL KAREEM, AGED 42 YEARS,
S/O.SEETHY, VADAVANAKKUDY HOUSE,
PATTIPPARA BHAGAM, VENGOLA KARA, PONJASSERY.

BY ADV. SMT.REKHA C.NAIR

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE, PERUMBAVOOR.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6786 OF 2007

Dated this the 28th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is the sole accused in a crime registered for offences punishable, inter alia, under Secs.452 and 324 of the IPC. The crux of the allegations against the petitioner is that on 13/10/07 at about 10.30 p.m., on account of animosity arising out of a property dispute regarding a right of way, the petitioner allegedly entered the house of the de facto complainant and attacked the de facto complainant and his wife with a stool which was available at the house. Both of them suffered injuries. They were taken to the hospital. A First Information Statement was lodged on the next morning. A crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. On account of ill-will arising from the property dispute, totally false and exaggerated allegations are being raised against the petitioner now. As a matter of fact, the incident did not take place in the manner alleged by the prosecution. The petitioner was attacked by the de facto complainant and his son on a pathway outside the residential property of the de facto complainant. In respect of that incident which took place at 10.40 p.m. on that night, a crime has been registered and investigation is in progress. The petitioner does not deserve to endure the trauma of arrest and detention. He may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes application. The learned Public Prosecutor submits that the allegations are serious. On account of a property dispute, the petitioner trespassed into the residential building of the de facto complainant at 10.30 p.m. in the night. The investigation reveals that the allegations raised in the counter case are totally unjustified and are raised only to make out a defence in the case initiated against the petitioner. The learned Public Prosecutor prays that there are no features in this case which would warrant or justify the invocation of the extraordinary equitable

discretion under Sec.438 of the Cr.P.C. The petitioner may be directed to surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary, normal and usual course.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I find no circumstances available in this case which can persuade this Court to invoke the extraordinary equitable discretion under Sec.438 of the Cr.P.C. I agree with the learned Public Prosecutor that the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-
(R. BASANT, JUDGE)

Nan/ //true copy// P.S. to Judge